

Working Session #5 – 10 CFR 851 Worker Safety Rule Issues Identified Per EFCOG and PSO

EFCOG

- Scope of requirement flow-down to subcontractors
 - Geographic responsibilities of contractors on multi-contractor sites
 - Relationships with site primes and DOE IDIQ contractors
- Need guidance on Interpretive Ruling Request Process & Anticipated Timing of Responses
- Need definition of process for adding to "exclusions list"
- Need definition of "Significant Change" will require re-submittal of WHS Plan/Document
- Need Consistency in Guidance for reporting "near misses" --- ORPS Approach or ???
- Need to address codes/standards incorporated by reference (851.23)
 - Concern with expansion of Standards
- Need Ability to directly use OSHA interpretations without Going to OGC for Ruling
- Need DOE Guidance on use of "Risk Based" Approach for NTS Reporting
- Need Process to recognize Code of Record Decision for Legacy Facilities
 - Need Way to address lack of Grandfathering in the Rule

EM

- No "grandfathering" to recover code of records
- No workshops until September 2006 (back loaded to fourth quarter)
- Contractors not subject to double jeopardy (cannot fine under PAAA and make fee adjustment)
- Thresholds for reporting incidents not finalized
- Requirement for Re-submittal of existing standards/requirement exemptions as variances
- Inclusion of DOE O 440.1A in contracts (existing, new IDIQ)
- Process for approval of submitted implementation plans

NE

- Codes & Standards Referenced in the Rule
 - Need a Clear DOE Policy on Grandfathering of Existing facilities/systems not meeting New Codes & Standards
- Thresholds for WHS PAAA NTS Reporting
 - Will the Process be the Same as the current PAAA process for other Rules?
- Will OSHA interpretations on de minimus violations be utilized?
- Will Enforcement Inspection relief be given for DOE VPP "STAR" Sites?
- Need a Consistent and Objective Approach on dealing with Equivalencies to Avoid Differences in PSO Reviews/Opinions

SC

- How handle subcontractor's written worker safety & health program? Place within the prime contractor's program? Flow-down through field elements or through prime contractor?
- How about smaller contractors direct to DOE?
- New contractor responsibilities to pre-existing violations.
- Approval processes
- Non-NTS reportable-reporting/tracking
- Grandfathering
- Gap-Analysis
- Slow timing for legal interpretations related to the rule
- Thresholds
- ISM System Descriptions are too broad for a written worker safety & health program
- Workshops are too late to help with the written program.
- Resource concerns with back-fitting, manpower draws and management focus

NNSA

- Need Standard Review Plan Approach for all 851 Submittals to Ensure Consistency across DOE
- Need to Address Exemption Process versus proposed Rule Variance Submittal & Processing
- Need Clear Milestones for forecasted EH Deliverables & Contractor Submittals
- Need NTS Threshold Reporting Levels and HQ Level Reporting Procedures
 - Delays will significantly impact NNSA Contractors
 - Some DOE Locations/Contractors Currently not under PAAA Reporting Structure

Cross-Cutting Issues on 10 CFR 851

- **Lack of grandfathering**
- **Flow-down process of requirements (e.g., for subcontractors)**
- **Diversification of resources to WHS oversight vs. mission activities**
- **Lack of Guidance on NTS Reporting Thresholds**
- **Scope of Reporting/Tracking system for non-NTS reportable noncompliances-potential for significant cost impact**
- **Lack of Guidance to site offices from HQ on approval processes**
- **Lack of Guidance on Interpretative Ruling Request Process and Anticipated Timing of Responses from OGC**
 - **Need Ability to use OSHA Interpretations without Going to OGC for Ruling**
- **Process needs to recognize existing exemptions without re-submittal as new variances**
- **Implementation Workshops--"Too few --Too Late"**
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Recommended Path Forward

- **Consolidate and Process all of Workshop 851 Issues and Concerns by Rule Subpart/Appendixes**
- **Use PSO and Field Communication Channels to Address Future Issues and Concerns**
- **Set up Joint DOE & EFCOG Project Team Meeting to Address Issues and Concerns**
- **Communicate Outcomes via DOE ISM Web Site**
 - **Establish 851 Implementation Specific Web Site**

Bottom Line

We Need to Implement the Rule but in a Cost Effective and Efficient